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March 2, 2011

Ms. Sherrie Kinkle  
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**RE: POSSESSORY INTERESTS ANNUAL USAGE REPORT FORM BOE-502-P: COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION IN INTERESTED PARTIES PROCESS ON CONFIDENTIALITY OF POSSESSORY INTEREST INFORMATION REQUESTING THAT THE BOARD ADVISE ASSESSOR OF THEIR DUTY TO DISCLOSE RECORDS OBTAINED FROM STATE AND LOCAL GOVERNMENTAL ENTITIES ABOUT POSSESSORY INTERESTS**

Dear Ms. Kinkle:

On behalf of the California Cable & Telecommunications Association ("CCTA"), I am writing to express our agreement with the position taken by CCTA's member, Time Warner Cable, that the State Board of Equalization ("SBOE" or "Board") should advise county assessors that all written and electronic records that they receive from state and local governmental entities which the assessors keep for valuation of possessory interests are public records that the assessors cannot keep secret when faced with a request under the California Public Records Act ("CPRA").

CCTA is a trade association representing cable operators who provide video, voice and Internet services to over 8 million California households and businesses. CCTA's members have possessory interests throughout California in the form of infrastructure that is in the public rights-of-way.

Because of the extensive possessory interests that CCTA's members hold, CCTA participated at the interested parties meeting on December 1, 2010. CCTA's members believe that the Legal Memorandum distributed by you in the Interested Parties Process on February 9, 2011 is correct in its conclusion that the Annual Usage Report is a public record that an assessor cannot hold "secret." However, by its own admission, the Legal Memorandum comes to the "inconsistent" conclusion that the same public information when labeled a change in ownership statement ("COS") must be held secret.

As a legal matter, all documents concerning possessory interests that assessors receive from state and local governmental entities are public records that may not be held secret regardless of how they are labeled or who requests them. As a matter of public policy, access to the records can ensure that valuation of possessory interests by CCTA's members is fair and the valuation process at the county-level is transparent.

County assessors have jurisdiction over cable companies' property taxes. As demonstrated by the following legal analysis, CCTA's members have an important interest in making sure that these public records are not held secret by the assessors. The Legislature created a unique law governing the valuation assumptions for the possessory interests of CCTA's members in Revenue and Taxation Code Section 107.7. Under that law, "the preferred method of valuation of a cable television possessory interest or video service possessory interest by the assessor is capitalizing the annual rent, using an appropriate capitalization rate." But the law also assumes that, "The methods of valuation shall include, but not be limited to, the comparable sales method, the income method (including, but not limited to, capitalizing rent), or the cost method." Access to the documents that, under Section 480.6, every state and local agency must turn over to the assessors annually gives CCTA's members the ability to develop their own comparables for both the preferred valuation method or any other method that an assessor may employ.

The Legal Memorandum correctly concludes that assessors may not hold Possessory Interest Annual Usage Reports "secret." CCTA agrees with the foundation for the Legal Department's conclusion – including the relevant provisions of the Constitution and Revenue and Taxation and Government codes, as well as the case analysis.

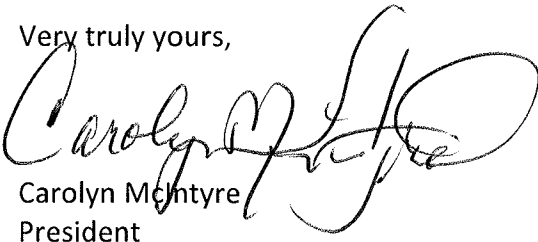
CCTA, however, is concerned that, by stating that "any possessory interest information provided by a public agency on a change in ownership statement is not subject to public disclosure," the Memorandum has described a path for public agencies and assessors to avoid disclosure of public records that the Constitution, Revenue and Taxation Code and CPRA would otherwise permit. Moreover, the Annual Usage Report and COS are not the only formats that the Board advice to the assessors must cover. As pointed out in the October 22, 2010 letter from Time Warner Cable, the SBOE's own documents reveal that the state and local governmental entities and county assessors use a variety of written and electronic means to transmit records about possessory interests and comply with Section 480.6.

CCTA believes that, employing the Memorandum's analysis for COS or any other means of possessory interest data transmission reaches the same conclusion as the Legal Department did for the Annual Usage Report – the documents cannot be held secret:

- Assessors are public agencies that must comply with the CPRA;
- Possessory interest records are public records;
- Article I, Section 3(b)(2) of Constitution requires that laws in existence at the time of passage of Proposition 59 must be broadly construed if they further the right of access and narrowly construed if they limit the right of access;
- Under *Gallagher*, to the extent that the Board gives advice that documents come within the assessors' secrecy obligation, it bears the burden of demonstrating that the documents are "confidential within the meaning of the privileged communications statutes" – a burden that the SBOE must advise the assessors that they will bear if they wish to resist disclosure of possessory interest public records;
- Under the confidentiality section at stake here – Section 481, any possessory interest records are not "requested by the assessors or the board" because, in enacting Section 480.6, the Legislature required that the state and local governmental entities provide the information to the assessors; and,
- Under the exception to the secrecy provision in Section 481 – Section 408(a) as interpreted by *Gallagher* – the possessory interest records provided by government entities are "open to public inspection" when held by an assessor because the law requires that the assessors keep them.

CCTA respectfully requests that the Board correct the "inconsistency" in the Legal Memorandum and advise the assessors that all records they keep on possessory interests that are provided by state and local governmental entities are not subject to any secrecy obligation and must be disclosed under the CPRA.

Very truly yours,



Carolyn McIntyre  
President